

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

|                              |   |                          |
|------------------------------|---|--------------------------|
| DEKALB GENETICS CORP.,       | ) |                          |
|                              | ) |                          |
| Plaintiff(s),                | ) |                          |
|                              | ) |                          |
| vs.                          | ) | Case No. 4:06CV01191-ERW |
|                              | ) |                          |
| SYNGENTA SEEDS INC., et al., | ) |                          |
|                              | ) |                          |
| Defendant(s).                | ) |                          |

**MEMORANDUM AND ORDER**

This matter comes before the Court on Plaintiff's supplemental submission for this Court's *in camera* review.

**I. BACKGROUND**

On April 13, 2007, Defendants' filed a Motion to Compel Production of Documents [doc. #63]. This Court held a hearing on Defendants' Motion on May 16, 2007 and issued an order that same day requesting the submission of the challenged documents for *in camera* review. On July 6, 2007, this Court issued an order specifying which documents were privileged, which documents had to be produced, and which documents required further explanation by Plaintiff. Plaintiff had ten (10) days to either produce the last group of documents, or provide additional evidence regarding their protected status. The documents in the last category were Privileged Documents ##0003, 0132, 0156, 0161, 0175, 0203, 0205, 0233, 0234, 0246.<sup>1</sup> Additionally, the Court asked for clarification on Privileged Documents ##0158 and 0159, as they appeared to be duplicate filings, and asked for clarification regarding the black squares on Privileged Document

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<sup>1</sup>All document numbers reference Plaintiff's Fourth Amended Privileged Document Log.

#0235. Plaintiff has provided the Court with supplemental documentation regarding Privileged Documents 0003, 0233, and 0234, which the Court has considered.

Plaintiff has provided the declaration of Dennis Hoerner in support of their claim of privilege regarding Privileged Document #0003. Having reviewed this declaration the Court finds that Document #0003 is privileged and need not be produced. The additional information regarding Document #0233 is not sufficient to support Plaintiff's assertion that the document is subject to the attorney client privilege. The Declaration of Ronald Lundquist, Ph.D. states that he expects the document was provided to Mr. Jacobs, an outside attorney for Plaintiff at the time of the documents creation, in conjunction with his preparation of a patent application for the corn transformation work. However, Mr. Lundquist cannot specifically identify the document, therefore the document must be produced. Conversely, Mr. Lundquist is able to identify Document #0234, by the footer designation, indicating that the set of claims was prepared by Mr. Jacobs relating to a patent application. Therefore Document #0234 is protected by the attorney client privilege.

The Court further notes that Plaintiff has provided a satisfactory explanation of the duplicate filings of Documents ##0158 and 0159, these documents need not be produced. However, Plaintiff has failed to provide an explanation of the black squares which appear on Document #0235. The Court requests that Plaintiff provide an explanation within five (5) days of this order. The remaining documents listed above shall be produced by Plaintiff without further delay, as no evidence of privilege has been established (Privileged Documents ## 0132, 0156, 0161, 0175, 0203, 0205, 0233, 0246).

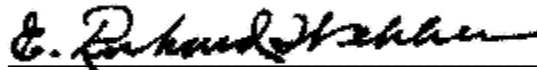
Accordingly,

**IT IS HEREBY ORDERED** that Privileged Documents ##0003 and 0234 are privileged, and therefore protected from discovery.

**IT IS FURTHER ORDERED** that Plaintiff shall produce Privileged Document #0233 as it has failed to provide an adequate basis of its assertion of the attorney client privilege.

**IT IS FURTHER ORDERED** that Plaintiff shall provide the Court with an explanation of the black squares on Document #235, within five (5) days of this order.

Dated this 20th Day of July, 2007.

A handwritten signature in black ink, appearing to read "E. Richard Webber", is written over a horizontal line.

E. RICHARD WEBBER  
UNITED STATES DISTRICT JUDGE